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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,376	08/03/2001	Jeffrey Lynn Chamberlain	75	7492

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08/29/2003

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EXAMINER

SMITH, KIMBERLY S

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/922,376

Applicant(s)

CHAMBERLAIN, JEFFREY LYNN

Examiner

Kimberly S Smith

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6,9 and 14-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8 and 10-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments filed 08/08/03 have been fully considered but they are not persuasive. Regarding the Applicant's statement that indicia would not be visible through the brushes covering the surface of the Deshaies invention (US 5,944,516): it is noted that there are a plurality of areas in which the brushes of Deshaies do not cover the surface and therefore indicia would in fact be visible therefrom (reference areas 10 and 12 in Figure 1 and the perspective view of Figure 4).

2. In response to applicant's argument that Deshaies teaches away from the use of a handle, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Regarding the cited Column 2, Lines 3-7, it is noted that Deshaies is making reference to a rope chew which is comprised of loosely stranded threads being knotted together whereas the Hass reference is directed to a tightly woven handle which is not the same structure as that discussed by Deshaies and therefore does not suffer from the deficiencies as stated.

3. Regarding the Applicant's traversal of the rejection of claim 5 on the grounds that the hollow cavity in Deshaies is affirmatively stated in that patent to be filled with a liquid of a paste like consistency. This is not found persuasive as the Deshaies reference positively states that

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there is an internal balloon containing a pressurized gas that is located at the center of the device.

As such, the traversal of this claim is not found persuasive.

4. Regarding the Applicant's traversal of Claims 7 and 8 on the grounds that the two valves disclosed by the Deshaies reference do not have a structure that moves in a substantially perpendicular alternate movement. With regards to the cited valve mechanism of Figure 2, this valve mechanism is used as a fill aperture. As the applicant has not stated the fill aperture moves perpendicular to the wall, the argument is considered moot. The valve mechanism relied upon by the Examiner was the valve mechanism shown at 46 in Figure 3 which clearly moves perpendicular to the wall off the device.

#### ***Claim Objections***

5. Claim 1 is objected to because of the following informalities: the wording of claim 1 has been deleted; however the claim itself has not been cancelled by amendment and therefore remains pending in the case. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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7. Claims 1, 2, 7, 8, 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Deshaies, US Patent 5,944,516.

Deshaies discloses a reservoir having a wall (14), a fill aperture (22) and valves (46), the fill aperture having a closable openable cap (30), said cap when open allowing liquid to enter the reservoir through the fill aperture and when closed, denying egress from said reservoir (column 4, lines 31-37), the valves having pressure actuated opening means, when under pressure allowing liquid to exit the reservoir and when not under pressure, denying egress from the reservoir (column 5, lines 50-55), wherein the outer layer is shaped to resemble a food item (column 8, lines 45-47).

Regarding claim 7, Deshaies discloses a reservoir having a wall (14), the wall having a fill aperture (22) and valves (46), the fill aperture having an openable cap (30), the valves comprising bores penetrating the wall (seen in Figure 3), a valve mechanism shaped substantially to fill the bores being capable of alternate movement substantially perpendicular to the wall and the mechanism having an opening permitting liquid (16) to flow for the reservoir during a first state of the movement and the opening being blocked by the wall during a second state of alternate movement of the valve mechanism, return means urging said valve movement to the second state of alternate movement of the valve mechanism and the valve mechanism being moveable to a first state of the alternate movement by application of pressure.

Regarding claim 8, Deshaies discloses the pressure being applied to the valve mechanism.

Regarding claim 11, Deshaies discloses an outer layer attached to the wall being shaped to resemble a food item (column 8, lines 45-47).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deshaies, US Patent 5,944,516.

Deshaies discloses the invention as claimed. However, Deshaies does not positively disclose the use of indicia on the outer layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply indicia to the device since it is known in the art that applying indicia, color, patterns, etc, increases the interest of the animal in the toy.

10. Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deshaies, US Patent 5,944,516 in view of Hass, US Patent 5,961,406.

Deshaies discloses the invention substantially as claimed. However, Deshaies does not disclose the use of a cord attached to the apparatus. Hass teaches within the same filed of endeavor the use of a cord attached to an animal apparatus as a means for holding the device without having to contact the wet device after the animal has chewed on it. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply a cord to the device of Deshaies as taught by Hass in order to enable the owner to carry the device without having to contact the chewed portion of the device.

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11. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deshaies, US Patent 5,944,516 in view of Huettner et al., US Patent 6,092,489 (Huettner).

Deshaies discloses the device substantially as claimed. However, Deshaies does not disclose the use of a noisemaker. Huettner teaches within the same field of endeavor the use of a noisemaker within a reservoir for exciting the animal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the noisemaker as taught by Huettner to the device of Deshaies in order to excite the dog and thereby entice the animal in the use of the device.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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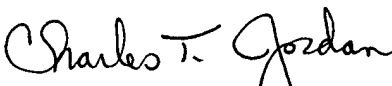
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

kss  
August 26, 2003

  
CHARLES T. JORDAN  
SUPERVISOR, PATENT EXAMINER  
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